IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.17550 of 2006 and
CWP NO.15158 of 2003(O&M)

DATE OF DECISION: October 26, 2006

Chanan Kaur

….Petitioner

VERSUS

Union of India and others

…..Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL
HON'BLE MR. JUSTICE H.S. BHALLA

PRESENT: Shri K.S.Dadwal, Advocate for the petitioner.
Shri Arvind Moudgil, Advocate for respondents No.1 to 3.
Shri Sukhdip Singh Brar, Additional Advocate General, Punjab for respondent No.5.

Viney Mittal,J.(Oral).

CM No.17550 of 2006

CM is allowed.

Counter affidavit filed on behalf of the Union of India is taken on record.

CWP NO.15158 of 2003

The petitioner has approached this Court challenging the order dated March 25, 2003 (Annexure P.9) whereby the claim of the petitioner for Freedom Fighter Pension has been rejected.

It has been claimed by the petitioner that she is entitled to the aforesaid pensionary benefits from the Central Government in

view of the Scheme i.e. Swatantrata Sainik Samman Pension Scheme, 1980.

During the course of arguments, Shri K.S.Dadwal, the learned counsel appearing for the petitioner has referred to para 4 of the preliminary objections of the counter affidavit filed on behalf of Union of India. The aforesaid preliminary objection reads as under:

> "That the application dated nil of the petitioner was received in this Ministry only on 27.7.1993. Her request was considered but was rejected as her application was received after the expiry of the date fixed for receipt of such applications and also that she had not sent any documentary evidence in support of her claimed suffering of her late husband. She was informed of the rejection on 29.9.1993. The petitioner later furnished a photocopy of the Discharge Certificate of her late husband from the Army. Army Records Office (Punjab Regiment) Meerut Cantt. was requested on 28.1.1994 to furnish INA particulars of late Kishan Singh, husband of the petitioner. No reply has been received from the Army Records Office."

On the basis of the aforesaid plea taken by the respondent Union of India in the counter affidavit, the learned

counsel for the petitioner has contended that it has been admitted on behalf of

the Union of India that the petitioner had submitted a photocopy of the discharge certificate of her late husband to the army. It has also been maintained that Army Records Office (Punjab Regiment) Meerut Cantt. was requested on January 28, 1994 to furnish INA particulars of late Kishan Singh, husband of the petitioner, but no reply has been received from the Army Records Office. According to the learned counsel, the respondents are trying to take benefit of their own inaction to deny the claim of the petitioner.

After taking into consideration the contentions of the learned counsel for the petitioner and averments made in the counter affidavit filed by Union of India, we are satisfied that the grievance made by the petitioner is wholly justified. Once the matter was under consideration of the competent authority and the case was referred for some clarification and production of the records from the Army Records Office and when no response was received, then the higher authority should have taken appropriate action against the said authorities, in accordance with law. However, the claim of the petitioner cannot be rejected merely on account of the fact that the requisite record has not been forwarded by the Army Records Office.

At this stage, the learned counsel appearing for the petitioner has also referred to a discharge certificate dated November 23, 1963, a copy whereof has been appended as Annexure P.1 with

the present petition. The aforesaid discharge certificate shows that Kishan Singh,2nd Punjab Regiment was discharged from army service

on March 9,1946 on account of the fact that "his service no longer required – being ex-INA".

In view of the aforesaid document appended with the writ petition, we find that the claim of the petitioner stands prima facie proved.

In this view of the matter, we dispose of the present petition with a direction to the respondents No.1 to 4 to take an appropriate action on the claim made by the petitioner, within a period of six months from the date a certified copy of this order is received, after taking into consideration the averments made in the present petition and the documents appended thereto and also the stand taken by the respondents.

A copy of the order be given dasti on payment of usual charges.

(Viney Mittal)
Judge

October 26, 2006
KD

(H.S. Bhalla)
Judge